

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOHN A. KUHN**

Claimant

VS.

**ATLANTIC HOMES**

Respondent

AND

**TRAVELERS INSURANCE COMPANY**

Insurance Carrier

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Docket No. 262,480

**ORDER**

Respondent appeals the March 6, 2001, Order of Administrative Law Judge John D. Clark. Claimant was awarded medical treatment with Nazih Moufarrij, M.D., and temporary total disability compensation commencing from January 9, 2001.

**ISSUES**

Respondent contends claimant failed to prove accidental injury arising out of and in the course of his employment on January 8, 2001. Respondent further contends claimant failed to provide notice of the December 20, 2000, accident in a timely fashion. Claimant, on the other hand, contends he suffered two traumatic injuries and a series of accidents beginning December 20, 2000, through January 8, 2001. The only date of accident addressed by the Administrative Law Judge in the Order deals with the January 8, 2001, accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges two specific accidental injuries, the first being on December 20, 2000, in Nebraska, and the second being on January 8, 2001, while carrying sheetrock for respondent, and a series of accidents from December 20, 2000, through January 8, 2001. Claimant testified the January 8 incident caused numbness in his left arm.

Claimant's uncontroverted testimony is that he advised his supervisor, Sam Russell, at 6:00 a.m. the morning of January 9, 2001, of the January 8, 2001, injury and that he was in pain and was going to the doctor. Mr. Russell did not testify. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Claimant's testimony regarding his notice to respondent on January 9, 2001, is uncontradicted. The Appeals Board, therefore, finds that notice was timely given as to the January 8 accident.

While respondent presents the testimony of Kenneth Brent, the owner of a pallet business, who was working with claimant after the alleged December accident, and the testimony of claimant's coworker, Jeffrey Roberts, neither contradict claimant's specific allegations of accidents. Both are aware that claimant was complaining of pain during this period of time. In fact, Mr. Brent testified that claimant refused to help him load pallets during the week after December 20. Mr. Roberts testified that claimant discussed his painful shoulder in the context of the pallet incident around Christmas. Additionally, claimant told him during the week of January 1 that his shoulder was bothering him. Claimant again mentioned to Mr. Roberts on January 14 that his shoulder and neck were still bothering him. However, the Administrative Law Judge did not address the alleged accident of December 20, 2000, or claimant's allegation of a series of accidents from December 20, 2000, through January 8, 2001.

In workers compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). The Appeals Board finds that, for preliminary hearing purposes, claimant has satisfied that burden in proving that he suffered accidental injury on January 8, 2001. Additionally, the Appeals Board finds claimant provided his supervisor timely notice of the January 8 accident on January 9, 2001. The Appeals Board, therefore, finds that the Order of the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated March 6, 2001, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2001.

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BOARD MEMBER

c: Charles W. Hess, Wichita, KS  
Brian R. Collignon, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director